

REMARKS/ ARGUMENTS

The foregoing amendment and the following arguments are provided to impart precision to the claims, by more particularly pointing out the invention, rather than to avoid prior art.

37 CFR 1.172(a) Objection

The examiner objected to the present reissue application under 37 CFR 1.172(a) Objection, stating that the assignee has not established ownership interest in the patent for which the present reissue is requested.

Applicants have previously submitted, on May 14, 2002, a Consent of Assignee to Reissue and Statement of Ownership, as signed by the assignee of the present reissue application. On September 19, 2002, applicants further submitted to the Office a copy of the original recorded assignment and the notice of recordation of assignment document from the original patent application showing assignment of the original patent application to the assignee of the present reissue application. A copy of the documents submitted to the Office are enclosed herein.

35 U.S.C. § 251 Defective Oath Rejection

Examiner rejected claims 1-52 under 35 U.S.C. § 251 as being based upon a defective reissue oath under 35 U.S.C. § 251.

The reissue declaration allegedly fails to set forth at least one error which is relied upon to support the reissue application. The Office Action maintains that the reissue oath/declaration does not specifically indicate what the defects are, how they arose, or when they were discovered.

On May 14, 2002, Applicants submitted signed declarations containing a statement of error, and stating that the error arose without deceptive intent. Applicants submit that the previously submitted declarations sufficiently set forth the error that occurred. The original application failed to claim certain embodiments. For example, the original application failed to claim specific embodiments that are now claimed in the new claims of this reissue application. These embodiments do not require that an air duct have internal fins, an inlet port located near the center, and first and second exit ports located at opposite end portions of the air duct. Applicants note that the MPEP §1414 states:

The “at least one error” which is relied upon to support the reissue application must be set forth in the oath/declaration. It is not necessary, however, to point out how (or when) the error arose or occurred. Further it is not necessary to point out how (or when) the error was discovered. If an applicant chooses to point out these matters, the statements directed to these matters will not be reviewed by the examiner, and the applicant should be so informed in the next Office action. All that is needed for the oath/declaration statement as to error in the identification of “at least one error” relied upon.

35 U.S.C. § 251 Recapture Rejection

Examiner rejected claims 28-52 under 35 U.S.C. § 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based.

A patentee is not estopped to seek reissue claims that are *different* in scope from those cancelled in the original patent application. Reissue claims are deemed different in scope from originally cancelled claims if they are narrower in at least one respect. *In re Richman*, 409 F.2d 269, 161 USPQ 359 (CCPA 1969);

Ball Corp. v. U.S., 729 F.2nd 1429, 221 USPQ 289 (Fed. Cir. 1984); and *Mentor Corp. v. Coloplast, Inc.*, 998 F.2nd 992, 27 USPQ2d 1521 (Fed. Cir. 1993).

Applicants' claims have been amended. The claims applicants added in the present reissue application have at least one feature that is more narrow than the claims that were canceled in applicants' original patent application.

35 U.S.C. § 102(b/e) Rejections

Examiner rejected claim 51 under 35 U.S.C. § 102(b/e) as being anticipated by either U.S. Patent 5,615,084 (hereinafter "Anderson") or European Patent Application EP0572326 (hereinafter "Katsui").

To anticipate a claims, the reference must teach every element of the claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (Manual of Patent Examining Procedures (MPEP) ¶ 2131.)

Applicants' claim 51 includes limitations that are not disclosed nor suggested by the Anderson nor Katsui. As a result, Applicants' claim 51 is not anticipated by Anderson nor Katsui.

In particular, Applicants' claim 51 includes the limitation of an air duct comprising a housing, with the air duct directing an air flow from an inlet port to an exit port, which is not disclosed nor suggested in either Anderson nor Katsui.

Examiner rejected claims 20, 21, 24, 26, 28, 29, 31, 33, and 35 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,339,214 (hereinafter "Nelson").

To anticipate a claim, the reference must teach every element of the claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (Manual of Patent Examining Procedures (MPEP) ¶ 2131.)

Applicants' independent claims 20, 28, and 35, include limitations that are not disclosed nor suggested by the Nelson. As a result, Applicants' independent claims are not anticipated by Nelson.

In particular, Applicants' independent claims 20, 28, and 35, include the limitation of an air duct comprising a housing, with the air duct directing an air flow from an inlet port to an exit port.

Nelson, however, does not disclose the claimed air duct comprising a housing, with the air duct directing an air flow from an inlet port to an exit port. Rather, Nelson is limited to disclosing:

Adjacent to the fans 32 is a heat sink 34. The heat sink 34 is typically constructed from an anodized aluminum and contains a plurality of fins 36 that increase the surface area of the member 34. The fins 36 are typically located perpendicular to the fans 32, so that air can readily flow through the heat sink 34. (col. 2, lines 51-56).

As a result, Nelson fails to disclose applicants' claimed air duct comprising a housing, with the air duct directing an air flow from an inlet port to an exit port. Therefore, Applicants' independent claims 20, 28, and 35, include

limitations that are not disclosed nor suggested by Nelson, and are therefore not anticipated by Nelson.

Applicants' remaining claims depend from at least one of the independent claims discussed above, and therefore include the distinguishing claim limitations as discussed above. As a result, Applicants' remaining claims are also patentable.



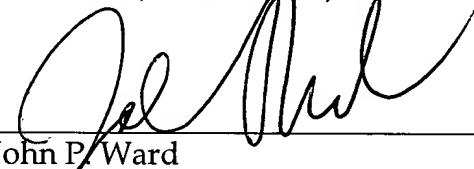
CONCLUSION

Applicants respectfully submit the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call John Ward at (408) 720-8300, x237.

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN


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Date: 10/07/2003

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